



Allegiance telecom, inc.
1150 Connecticut Avenue, N.W.
Suite 205
Washington, DC 20036
202/464-6101 phone
202/296-1019 fax

EX PARTE OR LATE FILED

ORIGINAL

RECEIVED

FEB 2 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 1, 2001

By Hand

Magalie Roman Salas
Secretary
Federal Communications Commission
Room CY-A257
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Written Ex Parte Presentation: CC Docket 96-98, 96-262, 97-146

Dear Ms. Salas:

On January 15, 2000, Royce Holland, Chief Executive Officer, Allegiance Telecom, Inc., submitted the attached presentation to the Bush-Cheney Transition Advisory Team for the Federal Communications Commission. These materials were subsequently provided to the Commissioners and their staff of the FCC for informational purposes. However, due to the advocacy nature of the presentation, and pursuant to section section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), an original and one copy of this letter are being provided to you for inclusion in the public record of the above-referenced proceedings.

Sincerely,

Kevin M. Joseph
Vice President
Government Affairs

cc: Commissioner Furchtgott-Roth
Commissioner Susan Ness
Commissioner Gloria Tristani
Kyle Dixon, Esq.
Jordan Goldstein, Esq.
Sarah Whitesall, Esq.
Rebecca Beynon, Esq.
Adam Krinsky, Esq.

No. of Copies rec'd 011
A B C D E

RESPONSES TO INFORMATION REQUEST

I. If a short list of 5 issues facing the FCC were being developed, what issues do you think should now be on that list?

The five issues, which focus on the state of local competition in telecommunications, should be as follows:

First, the Commission should quickly and fairly resolve its open proceeding on reciprocal compensation.

Second, the Commission should ensure that its regulations maximize the potential for the development and success of facilities-based local competition. For example, the Commission's rules regarding ILEC unbundling obligations should encourage new entrants to invest in their own facilities and discourage inefficient forms of competition such as an expansion of UNE-P.

Third, the Commission should be more diligent in enforcing the ILECs' compliance with the requirements of Sections 251 and 252. How the Commission enforces these preconditions for competition under section 251 is also relevant to the manner in which the Commission enforces the terms and conditions under which the ILECs are granted long distance authority section 271 . In addition, as more ILECs are applying for and receiving Section 271 authority, the FCC needs to be more vigilant in monitoring and taking swift action to remedy ILEC backsliding from compliance with the preconditions they were required to meet to obtain 271 approval.

Fourth, to the extent that the Commission decides that it must regulate CLEC access charges, any rules that it adopts must be fair, equitable and incorporate a reasonable transition period for implementation so that CLECs are given enough time to make necessary adjustments to their businesses, much in the same way the Commission adopt a gradual transition as part of the CALLS plan for the reduction of ILEC access charges. The FCC also needs to take forceful action against long distance carriers that engage in "self-help" by withholding payment of access charges to the CLECs that complete their calls. The interexchange carriers' refusal to pay local carriers for access to their networks to complete toll and long distance calls is counter to the Communications Act and the Commission should act swiftly to assess substantial monetary penalties against these carriers.

Fifth, the Commission needs to give greater certainty to the marketplace by concluding several open proceedings. Along with the open proceedings on reciprocal compensation and CLEC access charges, since March 17, 2000, the Commission has been considering a remand from the D.C. Circuit of the FCC's collocation rules, including the rule defining equipment that CLECs may collocate on ILEC premises. As heavy users of collocation, facilities-based CLECs are adversely impacted by the uncertainty resulting from this state of limbo. The FCC needs to conclude these rulemaking to give certainty to the marketplace.

II. What substantive rules and/or policies are in most need of reform?

The top priority of the FCC must be to establish policies that encourage economic growth through private investment and facilities-based competition in the communications and information industries. The economic development triggered by the Telecommunications Act of 1996 has slowed and the benefits to the United States of a growing and competitive telecommunications industry are in jeopardy.

The Commission must also recognize that it is not a neutral umpire in the local competition arena. It must essentially become a combatant on the side of competition. This means intervening wherever necessary into the marketplace to promote the cause of establishing the preconditions for facilities-based competition.

In this context, the FCC needs to do more to promote facilities-based competition. Only carriers that make investments in networks and equipment are able to deliver the product, technology and service innovations that provide competitive alternatives to the ILEC monopoly service. Traditional resellers and entrants that rely on UNE-P offer nothing more than the ILEC's monopoly service under different names.

The current debate concerning the availability of unbundled local switching (and therefore the availability of the UNE-P) illustrates this point. Based on the advocacy of CLECs that insist that it is too expensive to invest in facilities to serve small customers, the Commission is considering expanding the availability of unbundled switching. But this kind of unnecessary regulatory intervention threatens to harm those CLECs that have built their own facilities and do not need to rely on the UNE-P to serve customers. Increased availability of the UNE-P will introduce prices set by regulators into the market. Since regulators are almost never able to set prices at efficient levels (they could well be too low where the UNE-P is concerned), pricing signals will be distorted, thus making it more difficult for efficient facilities-based CLECs to compete. All the while, the resellers of the UNE-P can offer essentially nothing in terms of innovation or lower costs. The Commission should place its trust in the extensive benefits that facilities-based entrants can deliver. In fact, the Commission should reduce, not expand, the availability of the UNE-P.

Thus, the Commission should establish a fundamental policy preference for facilities-based competition over other forms of competition. This preference should not only be reflected in the unbundling rules, but throughout the Commission's enforcement of the 1996 Act.

In addition, the Commission has been unwilling to adopt the kind of aggressive enforcement measures that are required to ensure the continued development of local competition. The bottomline is that the FCC should be as feared as the Internal Revenue Service. Moreover, although the Commission has repeatedly acknowledged the importance of performance standards and penalties as a means of ensuring ILEC compliance with Sections 251 and 252, the Commission has refused to adopt such standards and penalties as part of its rules. The Commission must also change its apparent unwillingness to exercise its jurisdiction to order any significant prospective equitable relief in the context of enforcement proceedings.

III. What major management, administrative or procedural issues should be addressed?

The FCC must put in place an effective and rapid mechanism for enforcing compliance with the '96 Act and the implementing regulations to promote growth in the telecommunications sector. The enforcement system must ensure that ILECs comply with their obligations. The penalties for non-compliance must be more costly to the carriers than the perceived benefits of continuing anti-competitive conduct. An effective enforcement mechanism is especially important in cases involving Bell entry into long distance where, having opened their markets to competition and received approval under section 271, the Bell Operating Companies may relax their efforts to ensure that their competitors continue to have access to unbundled elements and other tools they need to compete in local markets. In this context, the Commission should consider more informal dispute resolution and more abbreviated enforcement activities with quarterly reports on compliance with the Commission's rules by the dominant carriers.

IV. What can be done to expedite the FCC decision-making process?

In the absence of statutory deadlines, the best way to expedite decision-making is for the Chairman to establish faster decisionmaking in the enforcement, dispute resolution area. Ensuring that the FCC has adequate resources to carry out its responsibilities quickly and efficiently can contribute importantly to expediting the agency's decision-making process. Experience suggests reducing the FCC's resources is not likely to lead to the agency doing less. It is more likely that the agency would undertake the same tasks, but take longer to complete them.

V. What significant challenges will face the new Administration and the 5 FCC Commissioners in any of the following areas: Congress, private sector, public sector, interest groups, public perceptions, or the press? What organizational changes should be reviewed early in the new Administration?

The Administration and FCC Commissioners will face two related and important challenges. First, they will be responsible for encouraging or discouraging growth, productivity and competition in the telecommunications industry and thus the economy generally. Second, the telecommunications policies of the next Administration and the FCC will determine whether the United States maintains its leadership in broadband deployment, or whether the United States cedes that position to another nation.

Without competition in the telecommunications sector, the engine that has driven the economy throughout this period of unmatched economic expansion will not be restarted. Continuation of the current decline will reverse the economic gains of the last five years, including massive investment in the sector, the promotion of innovation, and the export of technological productivity gains to the business community, particularly small and medium-sized businesses. Maintaining the flow of capital investment to the start-up firms that are building advanced, high-speed networks will sustain the growth of facilities-based competition in the telecommunications sector and establish a path towards eventual deregulation.

If Congress and the FCC do not start to take competition in local telecommunications seriously, the result will be far worse than a return to the *status quo ante* (pre-1996). We will not

have multiple incumbent carriers battling new entrants and long distance carriers domestically, and emerging as global telecom providers abroad, but rather a few incumbent carriers with no real competitive threat, and no incentive to foster innovation or global expansion. The net result will be that U.S. consumers and businesses suffer, and foreign telephone companies take over global leadership of broadband and communications innovation.

VI. Please provide any other information you feel would be helpful.

This is a critical time in the development of local competition. In the wake of the passage of the 1996, there was perhaps excessive optimism for the short-term prospects of local competition. CLECs raised billions of dollars and entered the market in astonishing numbers. The big long distance carriers also promised to enter the local market aggressively. It has now become clear that neither most of the CLECs nor the big IXC's are having much success in establishing themselves as viable competitors in the local market. But there are a select few facilities-based CLECs, such as Allegiance, that are well placed to become long-term competitors to the ILECs. Part of the reason these facilities-based CLECs have survived is that they are less reliant on regulators for the execution of their business plans than those carriers that rely on resale or UNE-P. But this does not mean that these facilities-based carriers will continue to gain market share without continued assistance from regulators. It is critical, for example, that the Commission aggressively and consistently enforce the ILECs' legal obligation to provide unbundled loops and collocation. It is also critical that whatever regulations the Commission adopts concerning CLEC access affords an adequate transition for CLECs to adjust their business plans.

In the local competition arena, the only way to achieve genuinely free and competitive markets for local telecommunications service is for the Commission to remain aggressively interventionist at this point in time. To be effective, such intervention must, as described, be designed to establish the preconditions for the growth of facilities-based competition. It is true that facilities-based competition is slow to develop it is the only kind of competition that can survive, and it is the only kind of competition that can deliver true benefits to society. Commission policies should reflect this fact.